Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	DA 99-414
	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC. [1]

Pursuant to Public Notice dated February 26, 1999,[2] SBC Communications Inc. ("SBC") hereby replies to certain comments filed March 30, 1999 concerning the December 21, 1998 report (the "Report") by the state members of the Joint Board on Jurisdictional Separations.

Regarding the Report's suggestion that there should be greater coordination between Parts 36 and 64, MCI contends that "the ILECs have made massive investments in preparation for entry into competitive or unregulated markets such as the interexchange market, video services market, and Internet services market."[3] MCI and AT&T contend that Part 64 is not adequate to protect ratepayers from bearing the costs of nonregulated investments.[4]

[1] SBC Communications Inc. ("SBC") files these Reply Comments on behalf of its subsidiaries, Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and The Southern New England Telephone Company.

[2] Public Notice, "Report Filed by State Members of Joint Board on Jurisdictional Separations," DA 99-414, released February 26, 1999.

[3] MCI at 2-3.

[4] Id.; AT&T at 3.

As SBC explained in its Separations Reform NPRM Reply Comments, contrary to these unsubstantiated claims of "massive," "hidden"[5] investment, the SBC LECs' regulated investments are fully justified by sound engineering and economic factors in support of their regulated services.[6] Further, the Commission has concluded repeatedly that Part 64 and other safeguards provide sufficient protection against cross-subsidy of nonregulated and competitive activities.[7] This is especially true in light of price cap regulation.

Contrary to MCI's apparent belief, Part 64 removes more than a sufficient share of the investments and expenses of nonregulated activities, although MCI appears concerned about some activities that are still regulated, yet competitive. In any event, if the concern is that some telecommunications services are more competitive than others, then the Commission should consider fully deregulating the most competitive services and moving them into the nonregulated category under Part 64. However, removal of a service from regulation under Part 64 does not require any change in separations, and thus, need not and should not be addressed by the Joint Board.[8]

Likewise, Section 254(k)'s provisions regarding subsidy of competitive and universal services do not require any change in the separation of costs between jurisdictions. SBC agrees with the Pennsylvania Office of Consumer Advocate ("OCA") that separations should not increase basic local telephone rates, but SBC does not agree that Section 254(k) should be the driver of that conclusion regarding the rate impact of

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[5] AT&T at 3.

[6] Separations NRPM Reply Comments, January 26, 1999, at 16-19.

[7] See, e.g., Accounting Safeguards Order, 11 FCC Rcd 17539, 17550-51, ¶25(1996) ("Our cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers' competitive ventures."(emphasis added)).

[8] As USTA noted, the Commission previously rejected Joint Board involvement in the Part 64 cost allocation process. USTA at 10-11(citing Joint Cost Order, 2 FCC Rcd 1298, 1340 (1987)).

separations.[9] It should simply be one of the Joint Board's goals in considering separations reform to avoid any separations changes that would result in any increase in such rates.

In the Universal Service Order,[10] the Commission described one of the criteria for the universal service support model as follows:

> A reasonable allocation of joint and common costs must be assigned to the cost of supported services. This allocation will ensure that the forward-looking economic cost does not include an unreasonable share of the joint and common costs for non-supported services.[11]

In CC Docket No. 96-45, the Commission and the Universal Service Joint Board are taking action to implement Section 254(k), by adopting criteria such as the above for its forward-looking economic cost model. Since the Commission and the Universal Service Joint Board are already addressing cost allocation associated with universal services, Section 254(k) does not require the Separations Joint Board to engage in a duplicative effort that is not even necessary.

Opposing any transition plan that would provide any relief from the burden of the separations process, AT&T urges the adoption of several major separations changes.[12] Without exception, the changes sought by AT&T would push more costs into the intrastate jurisdiction, contrary to the goal of stabilizing the separations results. While SBC has already addressed some of these suggestions in its Separations Reform NPRM Reply Comments,[13] SBC finds it interesting that all of AT&T's recommendations for immediate reform seek to move significant quantities of costs out of the interstate jurisdiction. If AT&T's suggested shifts in marketing and customer services expenses

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[9] OCA at 2.

[10] 12 FCC Rcd 8776 (1997).

[11] Id. at 8915.

[12] AT&T at 2-4. To address AT&T's concern that a transition plan might become permanent by default, the Commission could always place a sunset on the transition plan.

[13] See SBC Separations Reform NPRM Reply Comments, January 26, 1998, at 13-16.

were adopted, the cost allocated to local service would increase by about $0.39 per line per month. In addition, changing the loop factor from 25% to 15%, as suggested by AT&T, would result in a shift of about $2.25 per line per month. SBC fails to see any benefit in considering such fundamental changes involving large shifts in the separation of costs. In fact, AT&T appears to acknowledge this early in its Comments when it states that "it would be unwise to embark on time-consuming comprehensive separations reform . . .."[14] Instead of considering AT&T's or any other party's fundamental changes or refinements of the separations process at this time, SBC submits that USTA's freeze recommendation presents the most benefits and should be adopted, as it is the ideal transition plan. Its most important advantages are that it reduces the burden of an increasingly meaningless bookkeeping exercise and it stabilizes the separation of costs.

In contrast, the Report's transition plan, requiring continuation and augmentation of the existing process through a three-year rolling average, would not accomplish any positive objectives of separations reform. Virtually all of the commenters who considered the Report's three-year rolling average plan either opposed it or questioned its value.[15] ILECs provided further support for the best reason to forget about the Report's transition plan: it significantly increases the work required by the separations process.[16] At a time when even the Commission acknowledges that it has "reduce[d] [its] reliance on, and thus the importance of, jurisdictionally separated embedded cost,"[17] it would hardly be rational, or consistent with the 1996 Act's deregulatory mandate, to substantially increase the burden of the procedures required by the separations rules, without producing any benefits.

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[14] AT&T at 2.

[15] See, e.g., AT&T at 2; Ameritech at 8; Bell Atlantic at 4; GTE at 8; GVNW at 6-7; MCI at 8; Smithville at 9; Staurulakis at 3; TDS at 11-12; USTA at 8.

[16] See, Ameritech at 8; Bell Atlantic at 4; GTE at 8; Sprint at 9-10.

[17] Price Cap Performance Review of Local Exchange Carriers, CC Docket No. 94-1, 12 FCC Rcd 16642 ¶ 152 (1997).

Several parties comment on the implications of the Commission's recent Declaratory Ruling[18] on inter-carrier compensation for ISP-bound traffic. Obviously, the State Members were not able to include that Declaratory Ruling in their analysis and the Separations Joint Board should do so as it continues its work. However, the separations implications of that ruling is a subject of the rulemaking initiated in the companion Notice of Proposed Rulemaking (CC Docket No. 99-68). Thus, the subject should be addressed there in the first instance, and SBC refers the Joint Board to its comments filed on April 12, 1999 in that rulemaking.[19]

SBC notes, however, that it does not agree with MCI's interpretation of the Declaratory Ruling as holding that "ILECs should continue to treat ISP-bound traffic as intrastate for separations purposes."[20] First, the statement that MCI is misconstruing appears in the Notice of Proposed Rulemaking ("NPRM") at paragraph 36, not in the Declaratory Ruling. Second, what the NPRM states is that "the costs and the revenues associated with such connections [to LEC end offices] will continue to be accounted for as intrastate."[21] The "connections" to which paragraph 36 of the NPRM refers are the connections between the ISP and the ILEC's central office. The first twenty paragraphs of the Declaratory Ruling clearly reach the conclusion that ISP-bound traffic is jurisdictionally mixed, but largely interstate.[22]

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[18] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Declaratory Ruling in CC Docket No. 96-98 ("Declaratory Ruling") and Notice of Proposed Rulemaking in CC Docket No. 99-68 ("NPRM"), FCC 99-38, released February 26, 1999.

[19] Comments of SBC Communications Inc., CC Docket No. 99-68, filed April 12, 1999, at 28-31.

[20] MCI at 4.

[21] NPRM, ¶36.

[22] Declaratory Ruling, ¶¶ 1-20. See also Staurulakis, n.5 ("Nothing in this paragraph [36] suggests that dial-up ISP traffic should be assigned to the intrastate jurisdiction."); Bell Atlantic n.7.

Thus, ISP-bound traffic is treated as interstate, while the ISP's connections to the LEC's central office that the ISP buys out of an intrastate end user tariff will continue to be treated as intrastate.[23] As ISP-bound traffic is interstate, according to the Declaratory Ruling, it would not be proper to exclude such traffic from the separations process, as suggested by a couple of commenters.[24] In any event, consideration of separations issues raised by Internet-related traffic should not delay implementation of a freeze. A freeze can be implemented now, subject to future adjustment of the frozen relationships once any decisions are made to change the separations treatment of Internet-related traffic.

Conclusion

For the reasons explained in SBC's comments in this proceeding and herein, SBC urges the Joint Board to proceed now to endorse USTA's proposed freeze as a transition plan. Further, adoption of a freeze should not be delayed by any consideration of fundamental changes or refinement of the separations process, which should only be considered (if at all) in the long-term, if elimination of this process is not possible at that time.

Respectfully Submitted,
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[23] To be more precise, the ISP's connections to the central office are treated as subscriber plant with a 75% allocation to intrastate.

[24] Western Alliance at 2; Staurulakis at 5.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "CC DOCKET NO. 80-286, DA 99-414, REPLY COMMENTS OF SBC COMMUNICATIONS INC. IN THE MATTER OF JURISDICTIONAL SEPARATIONS REFORM AND REFERRAL TO THE FEDERAL-STATE JOINT BOARD." in CC Docket No. 80-286, DA 99-414 has been filed this 14th day of April, 1999 to the Parties of Record.

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